

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Brownfields Grant Program/Business Development Assistance Center (Commerce -- Departmentwide and Economic Development)**

[LFB Summary: Page 136, #31, Page 139, #33]

## CURRENT LAW

The Department of Commerce administers the Technology and Pollution Control and Abatement grant and loan program. The program was created in 1995 to provide grants and loans to fund various activities related to the production of products from recycled post-consumer or industrial waste and the abatement, control and treatment of air and water pollution. Eligible applicants include new or expanding businesses, municipalities or other public entities, nonprofit organizations or entities organized by a group of these entities. The grants and loans range from \$25,000 to \$750,000 and provide funding for projects which recycle postconsumer or industrial waste or treat or abate air and water pollution or fund technical research or assistance related to these projects. A total of \$200,000 GPR and \$800,000 SEG is provided for grants and loans. No funds can be encumbered after July 1, 1997; through April, 1997 \$877,614 was awarded to two applicants.

The Bureau of Permit and Business Assistance was created from the Permit Information Center by 1995 Wisconsin Act 27. The Bureau's responsibilities include: (1) serving as a state clearinghouse on state permits; (b) acting to expedite the process of permit application, review and issuance; (c) monitoring the status of permit applications and agreements reached in preapplication meetings; (d) providing advocacy services before regulatory agencies on behalf of permit applicants and advocating relevant legislative changes; and (e) providing mediation or dispute resolution services related to permit applications. The Bureau is currently prohibited from charging for services it provides and is primarily funded by GPR from the Department's economic and community development general program operations appropriation. Two positions

that perform activities related to compliance with the federal Clean Air Act are funded by program revenue.

## **GOVERNOR**

Provide \$20 million in recycling fund SEG in 1997-98 in a continuing appropriation to create a brownfields grant program administered by the Department of Commerce. The Department would be authorized to make grants to individuals, partnerships, corporations, limited liability companies, associations, organizations and municipalities to fund brownfields redevelopment projects and associated environmental remediation activities. Grants could not be made unless the party that was responsible for the actual or perceived environmental contamination of the facility or site that would be the subject of the project was unknown or could not be located. Grant recipients would contribute a specified proportionate share of the cost of the project in the form of cash or in-kind contributions in the form of actual remediation services. Grants would range from \$300,000 to a maximum of \$5 million and Commerce would be required to award a certain percentage of grants of varying amounts. The Department would be authorized to promulgate rules to administer the program. In awarding grants, Commerce would be required to consider the recommendations of the Department of Administration and the Department of Natural Resources and follow certain criteria. Brownfields would be defined as abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

The responsibilities of the existing Bureau of Permit and Business Assistance would be expanded to include brownfields related activities and the Bureau's name would be changed to the Business Development Assistance Center. The bill would provide \$250,400 SEG in 1997-98 and \$266,700 SEG in 1998-99 from the petroleum inspection fund and 2.0 positions beginning in 1997-98 to support the additional responsibilities. Of the total amounts appropriated, \$150,000 SEG would be provided annually to fund development of internet links and geographic information system databases. The remaining \$100,400 SEG in 1997-98 and \$116,700 SEG in 1998-99 would fund the two positions. The Business Development Assistance Center would be required to provide certain information about DNR permits, licenses and approvals, to act as an ombudsman for brownfields redevelopment projects and to administer the brownfields grant program created in the bill. In addition, the Center would be authorized to charge for the cost of the services it provided and amounts received would be deposited in a newly created program revenue continuing appropriation.

## DISCUSSION POINTS

### Brownfields Grant Program

1. Senate Bill 77 contains a number of programs which would provide financial assistance for the costs of remediation of environmental contamination:

a. Land Recycling Loan Program. Provides up to \$20 million from loan repayments to the clean water fund for financial assistance to cities, villages, towns or counties for projects to remedy environmental contamination of sites or facilities at which environmental contamination has affected, or threatens to affect, groundwater or surface water. (Joint Finance expanded this program to make businesses and individuals eligible.)

b. Environmental Remediation Tax Incremental Financing. Authorizes cities, villages, towns and counties to use an environmental remediation tax increment to pay the eligible costs of remediating environmental pollution on property that the local government owns. The local government would have to transfer the property to another person after it is remediated.

c. Brownfields Redevelopment Loan Guarantee Program. Provides \$4.0 million from the recycling fund to the Wisconsin development reserve fund (WDRF) administered by the Wisconsin Housing and Economic Development Authority (WHEDA) to guarantee loans under a brownfields redevelopment loan guarantee program. Under the program, WHEDA would be allowed to guarantee repayment of up to 80% of the principal of an eligible brownfields redevelopment loan.

d. Development Zone Tax Credits. The current development zone tax credits would be eliminated and replaced with a consolidated development zone credit, based on the amounts spent on environmental remediation and the number of full time jobs created or retained. The environmental remediation credit could be claimed for the amount expended for environmental remediation in a development, development opportunity and enterprise development zone. Environmental remediation would be defined as removal or containment of environmental pollution, and restoration of soil or groundwater that is affected by environmental pollution in a brownfield.

2. Most business investments are evaluated on their likely future return compared to other investment opportunities. The proposed brownfields grant program is designed to provide an incentive for environmental remediation projects and brownfields redevelopment projects on sites where tax incentives and loans would not be sufficient to offset the lower return on investment associated with the remediation and redevelopment project. In some cases, the cost of remediation and redevelopment will exceed the increase in value that would result from the remediation and redevelopment projects. In these instances, the grant could be used offset the difference between project cost and final value. In addition, the grants could be used to provide financial assistance for projects on severely contaminated sites, that might not otherwise be

undertaken. In the absence of any brownfield redevelopment, many contaminated areas will remain in their present state, with minimal potential for any cleanup of the existing contaminants.

3. Environmental contamination has caused urban redevelopers to avoid urban land that could potentially have soil contamination problems. This has often led to "green field" development on the outer borders of urban areas. Development of outlying areas extends the urban infrastructure, can lead to urban sprawl and eliminates valuable agricultural land. In many cases, the necessary infrastructure is already in place to serve brownfield areas. Again, the proposed grant program would provide funds to offset the lower expected return on investment from urban brownfield projects. As a result, it would provide an incentive for developers to purchase urban sites for redevelopment projects.

4. There are a number of current state programs which are designed to clean up hazardous substances and environmentally contaminated land. The environmental fund is administered by DNR and is used for program activities related to groundwater management, environmental response and repair, and nonpoint source water pollution abatement programs. The appropriations fund administrative, enforcement, preventative and cleanup activities. The petroleum environmental cleanup fund award (PECFA) program reimburses owners for a portion of the cleanup costs of discharges from petroleum product storage systems and home heating oil systems. The amount of reimbursement varies from a minimum of 75% to over 99% of eligible cleanup costs. Under the agricultural chemical cleanup program, the Department of Agriculture Trade and Consumer Protection (DATCP) oversees the investigation and remediation of agricultural chemical spills. A grant program funds certain cleanup costs. In addition, the WDF major economic development grant and loan program could provide funding for brownfields redevelopment projects. An argument against creating a new brownfields grant program is that current state programs fund brownfields remediation and redevelopment.

5. As an alternative, the proposed grant program could be converted to a loan program. A loan program could result in more efficient use of state funds. Because the loan must be repaid, there is less chance that unnecessary expenditures would be made. Loans would be more consistent with a program that was designed to take advantage of market forces. Under a loan program the remediation and brownfields redevelopment activities would have to produce a project that would generate a revenue stream that was sufficient to repay the loans. In addition, loan repayments could be used to establish a revolving loan fund that could finance future remediation and redevelopment projects. Currently, the Wisconsin Development Fund (WDF), Rural Economic Development (RED) program and Minority Business Development Fund (MBDF) are partially funded through program revenue grant repayment appropriations. On the other hand, a loan program may not provide a sufficient incentive to remediate and redevelop severely contaminated sites. The use of more risky but potentially innovative methods could also be discouraged.

There is some concern that redevelopers could use the grants to remediate and redevelop contaminated sites and then sell the sites for profit. To address this concern, the Committee could authorize Commerce to require grants to be repaid, if the funding is used to remediate and

redevelop sites that are subsequently resold at a gain (Commerce would determine criteria by rule).

6. It could be argued that the intent of the legislation creating the recycling surcharge was that revenues generated were to be spent on recycling collection programs and recycling market development. Under this view, recycling surcharge revenues and any recycling fund balance should be used only for recycling programs. The Committee could decide the proposed use of recycling funds for brownfield grants is inappropriate and not provide the recommended funding.

7. Grant recipients would be required to contribute a specified proportional share of project costs in cash or in-kind remediation services. Cash contributions could include public funds, except for grants or loans obtained through the Wisconsin Development Fund, Rural Economic Development program, or the Minority Business Development program. The proportional share of project cost that would have to be provided by a grant recipient would depend on the size of the grant received as follows: (a) a minimum of 20% for grants that do not exceed \$300,000; (b) 35% for grants exceeding \$300,000 up to \$700,000; and (c) 50% for grants exceeding \$700,000 up to \$5 million. These matching requirements are designed to ensure that the grant recipient is committed to completing the remediation and redevelopment project. Since many of the brownfield projects would be risky, the matching requirements are substantial for large grant amounts. It is believed that a developer would only commit substantial amounts of private funds to a project if the developer believed the project would be successfully completed. However, most of Commerce's grant and loan programs require a minimum 25% match. In addition, SB 77 includes a number of provisions, such as reducing the required match for customized labor training grants from 50% to 25%, which bring current program matching requirements in conformity with the 25% minimum. The matching requirement for the brownfields grant program could be changed to a uniform 25%.

8. Under the bill, Commerce would be required to award: (a) a total of \$3 million in grants that did not exceed \$300,000; (b) a total of \$7 million in grants that would be greater than \$300,000 but did not exceed \$700,000 and (c) a total of \$10 million in grants that would be greater than \$700,000, but did not exceed \$5 million. The maximum grant that could be awarded would be \$5 million. The Department would also be required to award at least seven grants for projects that would be located in municipalities with a population of less than 30,000. These limitations on grant size are intended to distribute funding to projects of different sizes which could be used to determine the most efficient methods for remediation and redevelopment.

The cost of cleaning up contaminated properties varies greatly depending on site-specific circumstances such as the amount and types of contamination, whether groundwater has been contaminated, geologic conditions and the methods that are used to conduct the cleanup. The following are DNR estimates of the approximate costs for various types of cleanups in the state:

a. Preliminary site investigations vary, but usually range between \$5,000 and \$200,000.

b. Further remedial investigation costs where serious contamination exists range from \$200,000 to \$1 million with most less than \$500,000.

c. Soil remedies range in cost from \$10,000 to over \$2 million.

d. The range in costs for groundwater remedies depends upon the type of cleanup. For sites where natural attenuation is being used, the costs generally range between \$20,000 and \$50,000. At sites where an active remedy is conducted, costs range from \$100,000 to potentially millions.

e. Landfill remedies usually involve capping and capital costs range from \$100,000 to \$20 million. However, most cost between \$4 to \$6 million. In addition, expenses for operation and maintenance can cost over \$1 million.

In reviewing these costs, it appears that many activities would cost less than \$1 million while major cleanups would cost millions. Consequently, the Committee may wish to require that total funding be divided equally, with \$10 million allocated to projects costing less than \$1 million and the remaining \$10 million allocated to projects costing over \$1 million.

9. In order to receive a grant, the party that was responsible for the actual or perceived environmental contamination of the facility or site that would be the subject of the project would be required to be unknown or could not be located. The administration has indicated that it intended to include cases in which the parties that were responsible for the contamination were known, but unable to pay for the remediation.

10. Under the proposed grant program, matching contributions could include public funds except for WDF, RED and MBDF grants and loans. As a result, in some cases, PECFA awards could be used in addition to matching funding for brownfields grants. The Committee could exclude projects which receive PECFA awards from being eligible for grants. In addition, the grant program does not specify that investigations are eligible remediation and brownfield redevelopment costs. The Committee could modify the bill to allow grants to be used to fund investigations.

11. The bill provides \$20 million SEG from the recycling fund in 1997-98 to a continuing appropriation under Commerce for the brownfields grant program. As a result, the entire \$20 million could be awarded as grants in 1997-98. However, if the entire \$20 million is awarded in 1997-98, the year-end unencumbered balance in the recycling fund would be in deficit. DOA has indicated that it intends that \$10 million in funding would be appropriated in each year of the biennium. As an alternative, the Committee could provide one-time funding of \$10 million SEG to the Commerce appropriation in each year.

12. Similar to the WHEDA loan guarantee program, Commerce's grant program would not be limited to the remediation of contamination at a brownfield site, but could provide for the construction or reconstruction of some type of facility at the site. It could be argued that the

brownfield grant program should be limited to the remediation of contamination at a brownfield site and should not include the provision of funds to construct a facility or develop a site economically. Commerce and WHEDA have other economic development grant and loan programs that could be used to fund the redevelopment of these properties.

13. In addition, given potential demands on the recycling fund, a more limited program could be considered.

#### **Business Development Assistance Center**

14. As noted, the bill would expand the responsibilities of the Bureau of Permit and Business Assistance and provide \$250,400 SEG in 1997-98 and \$266,700 SEG in 1998-99 from the petroleum inspection fund and 2.0 positions beginning in 1997-98 to support the expanded responsibilities. Of the total funding, \$150,000 SEG would be provided annually to fund development of internet links and geographic information system databases. The bill would also rename the Bureau the Business Development Assistance Center and the Center would be required to administer the brownfields grant program and to act as an ombudsman for brownfields redevelopment projects. As ombudsman, the center would have to:

- a. Promote brownfields redevelopment projects and related educational efforts.
- b. Coordinate interagency activities and responsibilities related to brownfields redevelopment projects.
- c. Coordinate, with the Department of Workforce Development (DWD), training programs or activities for unemployed persons who reside in the vicinity of a brownfield redevelopment project.

If the Committee eliminates the brownfields grant program, Commerce would not have a direct role in financing remediation and brownfields redevelopment programs. Consequently, these related provisions could be deleted from the bill.

15. One of the positions that would be provided would be responsible for ombudsman activities. The second position would be responsible for administering the brownfields grant program. Since the funding provided for the grant program is one-time funding, it could be argued that there is no need to provide a permanent position to administer the program. Consequently, the Committee could convert one position from a permanent to a two-year project position.

16. The bill would authorize Commerce to charge for services provided and a program revenue appropriation would be created for amounts received. The Department indicates that it requested this authority in order to determine if there was a market for information from its database related to licenses and permits. However, Commerce has since determined that it would

be too costly to produce updated information and therefore does not need the fee authority. The Committee could delete these provisions.

17. The bill creates a SEG appropriation to provide funding for the 2.0 administrative positions and to develop internet links and geographic information system databases. However, the appropriation language specifies that the funding is for staff for the Business Development Center. The Committee could modify the appropriation language to clarify that the funds are to be used for other purposes related to the Center's activities.

## **ALTERNATIVES TO BILL**

### **A. Brownfields Grant Program**

1. Approve the Governor's recommendation to provide \$20 million in recycling fund SEG in 1997-98 in a continuing appropriation to create a brownfields grant program administered by the Department of Commerce. The Department would be authorized to make grants to individuals, partnerships, corporations, limited liability companies, associations, organizations and municipalities to fund brownfields redevelopment projects and associated environmental remediation activities. Grants could not be made unless the party that was responsible for the actual or perceived environmental contamination of the facility or site that would be subject of the project was unknown or could not be located. Grant recipients would contribute a specified proportionate share of the cost of the project in the form of cash or in-kind contributions in the form of actual remediation services. Grants would range from \$300,000 to a maximum of \$5 million and Commerce would be required to award a certain percentage of grants of varying amounts. The Department would be authorized to promulgate rules to administer the program. In awarding grants, Commerce would be required to consider the recommendations of DOA and DNR and follow certain criteria. Brownfields would be defined as abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

2. Modify the Governor's recommendation by adopting one or more of the following:

a. Convert the brownfields grant program to a loan program. Create a program revenue appropriation for loan repayments to be used to fund additional loans under the program.

b. Authorize Commerce, by rule, to require that in cases where grant recipients sell the remediated and redeveloped site at a gain the grant must be repaid. Create a program revenue appropriation for grant repayments to be used to fund future grants.

c. Require that the cash or in-kind match must equal 25% of project costs.

d. Require that \$10 million of funding be used for grants under \$1 million and that \$10 million be used to fund grants of \$1 million or more.

e. Provide that grants could be awarded in cases where the parties responsible for the contamination are unable to pay for the remediation.

f. Provide one-time funding of \$10 million SEG in 1997-98 and \$10 million SEG in 1998-99 for the grant program.

g. Prohibit PECFA award recipients from receiving brownfield grants.

h. Include the cost of investigations as eligible projects costs for grants.

i. Limit awards to include only the costs associated with the remediation of contamination at a brownfield site.

3. Modify alternative 1 or 2 to provide \$10 million in 1997-98 only from the recycling fund and adjust award criteria accordingly. (The recycling fund balance would increase by \$10 million.)

|                                  |                |
|----------------------------------|----------------|
| <u>Alternative A3</u>            | <u>SEG</u>     |
| 1997-99 FUNDING (Change to Bill) | - \$10,000,000 |

4. Maintain current law.

|                                  |                |
|----------------------------------|----------------|
| <u>Alternative A4</u>            | <u>SEG</u>     |
| 1997-99 FUNDING (Change to Bill) | - \$20,000,000 |

#### **B. Business Development Assistance Center**

1. Approve the Governor's recommendation to expand the responsibilities of the existing Bureau of Permit and Business Assistance to include brownfields related activities and change the Bureau's name to the Business Development Assistance Center. The bill would provide \$250,400 SEG in 1997-98 and \$266,700 SEG in 1998-99 from the petroleum inspection fund and 2.0 positions beginning in 1997-98 to support the additional responsibilities. Of the total amounts appropriated, \$150,000 SEG would be provided annually to fund development of internet links and geographic information system databases. The remaining \$100,400 SEG in 1997-98 and \$116,700 SEG in 1998-99 would fund the two positions. In addition, the Center would be authorized to charge for the cost of the services it provided and amounts received would be deposited in a newly created program revenue continuing appropriation.

2. Modify the Governor's recommendation by adopting one or more of the following:

a. Convert 1.0 SEG position provided in SB 77 to a two-year project position.

b. Delete provisions which authorize the Business Development Center to charge fees for services and the related program revenue appropriation.

c. Modify SB 77 appropriation language to clarify that the newly created SEG appropriation could be used to fund Center activities in addition to staff.

3. Maintain current law.

| <u>Alternative B3</u>              | <u>SEG</u>  |
|------------------------------------|-------------|
| 1997-99 FUNDING (Change to Bill)   | - \$517,100 |
| 1998-99 POSITIONS (Change to Bill) | - 2.00      |

Prepared by: Ron Shanovich

MO# Alt 3  
(part B)

|           |          |   |   |
|-----------|----------|---|---|
| 1 BURKE   | <u>Y</u> | N | A |
| 2 DECKER  | <u>Y</u> | N | A |
| GEORGE    | <u>Y</u> | N | A |
| JAUCH     | <u>Y</u> | N | A |
| WINEKE    | <u>Y</u> | N | A |
| SHIBILSKI | <u>Y</u> | N | A |
| COWLES    | <u>Y</u> | N | A |
| PANZER    | <u>Y</u> | N | A |
| JENSEN    | <u>Y</u> | N | A |
| OURADA    | <u>Y</u> | N | A |
| HARSDORF  | <u>Y</u> | N | A |
| ALBERS    | <u>Y</u> | N | A |
| GARD      | <u>Y</u> | N | A |
| KAUFERT   | <u>Y</u> | N | A |
| LINTON    | <u>Y</u> | N | A |
| COGGS     | <u>Y</u> | N | A |

AYE 8 NO 8 ABS 0

MO# 2C

|           |          |   |   |
|-----------|----------|---|---|
| 2 BURKE   | <u>Y</u> | N | A |
| DECKER    | <u>Y</u> | N | A |
| GEORGE    | <u>Y</u> | N | A |
| JAUCH     | <u>Y</u> | N | A |
| WINEKE    | <u>Y</u> | N | A |
| SHIBILSKI | <u>Y</u> | N | A |
| COWLES    | <u>Y</u> | N | A |
| PANZER    | <u>Y</u> | N | A |
| JENSEN    | <u>Y</u> | N | A |
| OURADA    | <u>Y</u> | N | A |
| HARSDORF  | <u>Y</u> | N | A |
| ALBERS    | <u>Y</u> | N | A |
| GARD      | <u>Y</u> | N | A |
| KAUFERT   | <u>Y</u> | N | A |
| LINTON    | <u>Y</u> | N | A |
| COGGS     | <u>Y</u> | N | A |

AYE 16 NO 0 ABS 0

COMMERCE

Brownfields Grant Program [LFB Paper #606]

Motion:

Move to modify eligibility provision related to responsible parties for the brownfields grant program to: (a) specify that the party causing that portion of the actual or perceived environmental contamination of the facility or site that is the subject of the grant request is unknown or cannot be located; (b) add that the term "party" includes the party who owned or managed the business or entity that caused the discharge or who controlled the hazardous substance prior to its discharge; and (c) add "or is unable to pay" to the requirements that the party be unknown or could not be located.

Note:

Under the provisions of SB 77, brownfields grants could not be made unless the party that was responsible for the actual or perceived environmental contamination of the facility or site that would be the subject of the project was unknown or could not be located.

MO# 5007

|           |                                    |                                    |   |
|-----------|------------------------------------|------------------------------------|---|
| BURKE     | Y                                  | <input checked="" type="radio"/> N | A |
| DECKER    | Y                                  | <input checked="" type="radio"/> N | A |
| GEORGE    | Y                                  | <input checked="" type="radio"/> N | A |
| JAUCH     | Y                                  | <input checked="" type="radio"/> N | A |
| WINEKE    | Y                                  | <input checked="" type="radio"/> N | A |
| SHIBILSKI | Y                                  | <input checked="" type="radio"/> N | A |
| COWLES    | <input checked="" type="radio"/> Y | N                                  | A |
| PANZER    | <input checked="" type="radio"/> Y | N                                  | A |
| JENSEN    | <input checked="" type="radio"/> Y | N                                  | A |
| OURADA    | <input checked="" type="radio"/> Y | N                                  | A |
| HARSDORF  | <input checked="" type="radio"/> Y | N                                  | A |
| ALBERS    | <input checked="" type="radio"/> Y | N                                  | A |
| GARD      | <input checked="" type="radio"/> Y | N                                  | A |
| KAUFERT   | <input checked="" type="radio"/> Y | N                                  | A |
| LINTON    | Y                                  | <input checked="" type="radio"/> N | A |
| COGGS     | Y                                  | <input checked="" type="radio"/> N | A |

AYE 8 NO 8 ABS 0

NATURAL RESOURCES -- AIR, WASTE AND CONTAMINATED LAND

State Recycling Programs

Motion:

Move to make the following changes related to state recycling programs and use of recycling fund monies:

1. Delete \$15,000,000 recycling SEG from the SB 77 Commerce brownfields grant program (LFB Paper #606).

Provide one-time funding of \$5 million GPR in each year to establish a brownfields loan program which would provide loans to municipalities or local development corporations for brownfields redevelopment, environmental audits or associated environmental remediation activities subject to brownfields grant program provisions relating to cash and in-kind matches, award criteria, the amount and distribution of awards, coordination with DOA and DNR, promulgation of rules for administering the programs and providing an annual report. Create a program revenue loan repayment appropriation to fund future loans and grants. In addition, establish the following provisions which would apply to both the grant and loan programs.

Require that before making a grant or loan, the Department must determine that one of the following applies:

- a. The party responsible for the actual or perceived environmental contamination of the facility or site that is the subject of the project is unknown, cannot be located, or financially unable to pay the costs of brownfields redevelopment, an environmental audit, or associated environmental remediation activities.

- b. The municipality, or local development corporation will pursue recovery of the costs of brownfields redevelopment, an environmental audit, or associated environmental remediation activities from the party responsible for the actual or perceived environmental contamination, and the municipality or local development corporation will repay the department a proportionate amount of the costs actually recovered.

Authorize Commerce to make a grant or loan if all of the following applied:

- a. The person uses the loan for brownfields redevelopment, an environmental audit, or associated environmental remediation activities.

b. The party responsible for the actual or perceived environmental contamination of the facility or site that is the subject of the project is unknown, cannot be located, or is financially unable to pay the costs of brownfields redevelopment, an environmental audit, or associated environmental remediation activities.

c. The person contributes to the cost of the project in-kind or cash.

Brownfields redevelopment would be defined to mean any work or undertaking by a person, municipality or local development corporation to acquire a brownfields facility or site, to conduct an environmental audit, to engage in environmental remediation, and to raze, demolish, remove, reconstruct, renovate or rehabilitate existing buildings, structures or other improvements to promote use of the brownfields facility or site for commercial industrial, residential or other purposes.

"Environmental audit" would mean an investigation, analysis and monitoring of a brownfields facility or site to determine the existence and extent of actual or potential environment pollution.

"Environmental remediation activities" would mean abating, removing or containing environmental pollution at a brownfields facility or site, or restoring soil or groundwater at a brownfields facility or site.

"Local development corporation" would mean a nonprofit corporation organized under ch. 181 of the statutes that does all of the following:

1. Operates within specific geographic boundaries;
2. Promotes economic development with a specific geographic area.;
3. Demonstrates a commitment to or experience in redevelopment of brownfields.

"Municipality" would mean a city, village, town or county.

"Person" would mean an individual, partnership, corporation, limited liability company, or limited liability partnership.

2. Repeal, on December 31, 1999, the effective recycling program criteria (which responsible units must meet to receive municipal and county recycling grants), the duty of DNR to review and determine whether local recycling programs are effective, variances to the criteria and exceptions to the criteria. Instead, require a responsible unit of government to register a local recycling program with DNR as being an effective recycling program that manages solid wastes in compliance with the 1991, 1993 and 1995 landfilling and incineration bans and the state solid waste management hierarchy in order to be eligible for recycling grants in 2000.

3. Make the following modifications to the existing municipal and county recycling grant program for calendar years 1998 and 1999: (a) increase the total grant amount for calendar year 1999 from \$17 million under current law to \$24 million; (b) continue the same grant calculation formula as currently exists for calendar year 1997; (c) repeal the funding of yard waste expenses; and (d) repeal the 10% set-aside of the funds appropriated for supplemental grants to responsible units that have implemented a volume-based fee system for solid waste services.

4. Create a municipal and county recycling grant program for calendar year 2000 as follows: (a) provide \$19,000,000 SEG from the recycling fund for grants for calendar year 2000; (b) specify that a responsible unit that has submitted a registration to DNR for the responsible unit's effective recycling program by October 1, 1999, would be eligible for a calendar year 2000 grant; (c) direct DNR to award grants to eligible responsible units by providing them with the same percentage of the total amount of grant funds that a responsible unit received in calendar year 1999; and (d) specify that calendar year 2000 grants may be expended on expenses of a registered recycling program that complies with the 1995 landfilling bans (this excludes yard waste costs).

~~5. Make the following changes related to out-of-state waste disposed of in Wisconsin: (a) authorize an out-of-state government to register its effective recycling program for waste disposed in Wisconsin in the same manner as a responsible unit may register its program; (b) repeal the requirement that the status of the recycling program of a local unit of government located outside of Wisconsin as an "effective recycling program" be promulgated in rules; (c) repeal the requirement that, in order for solid waste generated in another state to be disposed of in Wisconsin, the state in which it is generated must have an "effective landfill siting program"; (d) repeal the solid waste capacity fee; (e) repeal the requirement that an out-of-state unit be in compliance with all of its home state's recycling requirements in order for its recycling program to be registered as an effective program; (f) allow an out-of-state unit to obtain an exception to the 1995 landfilling and incineration bans that responsible units are now able to obtain; and (g) repeal the requirement that the DNR promulgate rules for determining the comparability of an out-of-state unit's recycling program.~~

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Note:

The motion would leave \$5 million of recycling fund monies for the Commerce brownfields grant program. And create a \$10 million GPR revolving loan fund (\$5 million PR in each year of the 1997-99 biennium only).

The motion would increase funding for municipal and county recycling grants to \$24 million in 1998-99 and would create an additional year of grant funding and eligibility

requirements in 1999-2000 with \$19 million for grants. For calendar year 2000, the current requirements that a responsible unit obtain DNR certification of its effective recycling program would be replaced with self-certification by the responsible unit that it has an effective recycling program.

In response to recent federal court rulings, the motion would make a number of changes related to out-of-state waste disposed in Wisconsin. Items #6 (b) through (g) were recommended by the Joint Legislative Council Special Committee on the Future of Recycling.

If the motion and the remaining Governor's recommendations related to use of recycling fund monies are approved (\$4 million for a WHEDA brownfields loan guarantee program and \$500,000 for DOA geographic information systems), the recycling fund would have a balance of approximately \$20.6 million on June 30, 1999. The 1998-99 year-end recycling fund balance would be available to fund the \$19 million in municipal and county recycling grants for calendar year 2000, but would not be sufficient to continue other expenditures from the recycling fund at the 1998-99 level.

[Change to Base: \$10,000,000 GPR and \$7,000,000 SEG]

[Change to Bill: \$10,000,000 GPR and -\$8,000,000 SEG]

MO# 7009

|           |                                  |                                  |              |
|-----------|----------------------------------|----------------------------------|--------------|
| BURKE     | Y                                | <input checked="" type="radio"/> | A            |
| DECKER    | Y                                | <input checked="" type="radio"/> | A            |
| GEORGE    | <input checked="" type="radio"/> | N                                | A            |
| JAUCH     | <input checked="" type="radio"/> | N                                | A            |
| WINEKE    | <input checked="" type="radio"/> | N                                | A            |
| SHIBILSKI | <input checked="" type="radio"/> | N                                | A            |
| COWLES    | <input checked="" type="radio"/> | N                                | A            |
| PANZER    | <input checked="" type="radio"/> | N                                | A            |
| JENSEN    | <input checked="" type="radio"/> | N                                | A            |
| OURADA    | <input checked="" type="radio"/> | N                                | A            |
| HARSDORF  | <input checked="" type="radio"/> | N                                | A            |
| ALBERS    | <input checked="" type="radio"/> | N                                | A            |
| GARD      | <input checked="" type="radio"/> | N                                | A            |
| KAUFERT   | <input checked="" type="radio"/> | N                                | A            |
| LINTON    | <input checked="" type="radio"/> | N                                | A            |
| COGGS     | <input checked="" type="radio"/> | N                                | A            |
| AYE       | <u>14</u>                        | NO <u>2</u>                      | ABS <u>0</u> |

its in 1999-2000 with \$19 million for grants. For calendar year 2000, the current  
 nts that a responsible unit obtain DNR certification of its effective recycling program  
 replaced with self-certification by the responsible unit that it has an effective recycling

response to recent federal court rulings, the motion would make a number of changes  
 to out-of-state waste disposed in Wisconsin. Items #6 (b) through (g) were recommended  
 Joint Legislative Council Special Committee on the Future of Recycling.

If the motion and the remaining Governor's recommendations related to use of recycling  
 monies are approved (\$4 million for a WHEDA brownfields loan guarantee program and  
 ,000 for DOA geographic information systems), the recycling fund would have a balance  
 approximately \$20.6 million on June 30, 1999. The 1998-99 year-end recycling fund balance  
 ld be available to fund the \$19 million in municipal and county recycling grants for calendar  
 r 2000, but would not be sufficient to continue other expenditures from the recycling fund at  
 1998-99 level.

[Change to Base: \$10,000,000 GPR and \$7,000,000 SEG]  
 [Change to Bill: \$10,000,000 GPR and -\$8,000,000 SEG]

MO# 7009

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| GEORGE    | Y | N | A |
| JAUCH     | Y | N | A |
| WINEKE    | Y | N | A |
| SHIBILSKI | Y | N | A |
| COWLES    | Y | N | A |
| PANZER    | Y | N | A |
| JENSEN    | Y | N | A |
| OURADA    | Y | N | A |
| HARSDORF  | Y | N | A |
| ALBERS    | Y | N | A |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| LINTON    | Y | N | A |
| COGGS     | Y | N | A |

AYE 14 NO 2 ABS 0

NATURAL RESOURCES -- AIR, WASTE AND CONTAMINATED LAND  
State Recycling Programs

Motion:

Move to make the following changes related to state recycling programs and use of recycling fund monies:

1. Delete \$15,000,000 recycling SEG from the SB 77 Commerce brownfields grant program (LFB Paper #606).

Provide one-time funding of \$5 million GPR in each year to establish a brownfields loan program which would provide loans to municipalities or local development corporations for brownfields redevelopment, environmental audits or associated environmental remediation activities subject to brownfields grant program provisions relating to cash and in-kind matches, award criteria, the amount and distribution of awards, coordination with DOA and DNR, promulgation of rules for administering the programs and providing an annual report. Create a program revenue loan repayment appropriation to fund future loans and grants. In addition, establish the following provisions which would apply to both the grant and loan programs.

Require that before making a grant or loan, the Department must determine that one of the following applies:

- a. The party responsible for the actual or perceived environmental contamination of the facility or site that is the subject of the project is unknown, cannot be located, or financially unable to pay the costs of brownfields redevelopment, an environmental audit, or associated environmental remediation activities.
- b. The municipality, or local development corporation will pursue recovery of the costs of brownfields redevelopment, an environmental audit, or associated environmental remediation activities from the party responsible for the actual or perceived environmental contamination, and the municipality or local development corporation will repay the department a proportionate amount of the costs actually recovered.

Authorize Commerce to make a grant or loan if all of the following applied:

- a. The person uses the loan for brownfields redevelopment, an environmental audit, or associated environmental remediation activities.

NATURAL RESOURCES -- AIR, WASTE AND CONTAMINATED LAND

State Recycling Programs

Motion:

Move to approve the recommendations of the Joint Legislative Council Special Committee on the Future of Recycling that are contained in WLCS: 0337/1, as amended by WLCS: 0385/1 (except as it relates to materials exchanges). The provisions include the following (all appropriations are from the segregated recycling fund):

1. Create a municipal and county recycling grant program for calendar years 2000 through 2004 with funding of \$24,000,000 SEG annually from the recycling fund. The grant program would consist of three components: (a) a basic recycling component equal to \$3 times the population of the responsible unit; (b) a curbside collection component equal to \$1.25 times the population of the responsible unit; and (c) a waste reduction component equal to \$1.25 times the population of the responsible unit that is served by the waste reduction programs the responsible unit implements. The sum of the three grant components could not exceed 75% of the responsible unit's recycling expenses. The Department would be required to first pay the basic recycling component, then the curbside component and finally any remaining funds for the waste reduction component.

2. Make the following modifications to the existing municipal and county recycling grant program for calendar years 1998 and 1999: (a) increase the total grant amount for calendar year 1999 by \$7 million (from \$17 million currently to \$24 million); (b) continue the same grant calculation formula as currently exists for calendar year 1997; (c) repeal the funding of yard waste expenses; and (d) repeal the 10% set-aside of the funds appropriated for supplemental grants to responsible units that have implemented a volume-based fee system for solid waste services.

3. Reduce the current temporary recycling surcharge on business income taxes beginning with tax year 1998 and delay the sunset of the surcharge from 1999 to 2004. Make the following modifications to the surcharge: (a) reduce the recycling surcharge rate from 5.5% to 2.75% of gross tax liability or from 0.4345% to 0.21725% of net business income for nonfarm sole proprietorships, partnerships, limited liability companies taxed as partnerships and S corporations; (b) exempt businesses from gross receipts of less than \$1,000,000 (\$4,000 currently); and (c) exempt noncorporate farms (flat \$25 currently if profits exceed \$1,000). Estimated revenue to the recycling fund would decrease by \$26.4 million in 1998-99 (from \$40.2 million to \$13.8 million).

4. Recreate the tire recovery fee and increase the fee from \$2 to \$4 per tire (\$20 per car). The fee would be collected by DOT at the time the owner of a new vehicle applies for a certificate of title for the vehicle. Sunset the fee in 2004. The fee would generate revenues of approximately \$5.7 million in 1997-98 and \$6.8 million in 1998-99.

5. Make the following changes in the Recycling Market Development Board: (a) provide financial assistance of \$2,176,500 annually; (b) provide \$323,500 annually and 4.0 positions for administration; (c) require that the RMDB's priority list of materials for which the RMDB may provide assistance give priority to materials that, if not recovered, would be disposed in landfills; (d) limit the authority of the RMDB to contract for services to state agencies, rather than with any other person; (e) repeal the limitation that the RMDB may not expend more than 10% of its financial assistance appropriation for contracts with and financial assistance to responsible units and other local units of governments; and (f) require that financial assistance awarded by the RMDB be consistent with the RMDB's current strategic plan.

6. Provide \$300,000 annually to the RMDB to contract for the creation of a statewide materials exchange and one or more regional materials exchanges. A materials exchange is a service which provides information regarding wastes available for reuse and helps to connect waste generators with parties that can use the waste being generated.

Modify the recommendations of the Special Committee on the Future of Recycling relating to materials exchanges to: (a) direct the RMDB to contract with the Business Material Exchange of Wisconsin (BMEX) (a program of the Greater Beloit Chamber of Commerce) for the creation and operation of a statewide materials exchange; (b) direct the contractee (BMEX) to operate or contract for the creation and operation of one or more regional materials exchanges; (c) remove the Special Committee's recommendation that the RMDB contract with UW-Extension for educational programs that support the materials exchanges; and (d) remove the Special Committee's recommendation that the RMDB submit a feasibility report to the Joint Committee on Finance on the need for the exchanges, as a condition of the RMDB encumbering or expending monies for the materials exchanges.

7. Direct DNR to maintain estimates of the amount of materials that are recovered from solid waste for reuse or recycling. Require materials recovery facilities to report, according to DNR rules, the amount of certain recyclable materials that they receive.

8. Repeal the effective recycling program criterion that requires that, beginning in 1997, responsible units of government implement a system of volume-based solid waste fees to generate revenues equal to the responsible unit's costs for solid waste management other than the costs that are reimbursed by the state.

9. Provide that a person who donates or sells, at a price not exceeding overhead and transportation costs, materials to a materials reuse program that is operated by a charitable organization or a local government is immune from civil liability for injury, death or property damage that is caused by the donated material.

10. Recreate the waste tire reimbursement grant program to partially reimburse processors or end users of waste tires and provide \$1,200,000 annually for grants.

11. Amend the waste reduction and recycling demonstration grant program to allow grants to be paid for community-wide waste reduction projects, with grants of up to 75% of eligible costs (compared to 50% for other projects).

12. Provide \$400,000 annually to the UW-System for research by UW faculty and others into a variety of topics related to solid waste management.

13. Provide \$550,000 on a one-time basis to DNR and UW-Extension for a public education program related to the purchase of recycled items by the public and the reduction of solid waste generation by the public. This would include: (a) \$205,000 in 1997-98 and \$179,000 in 1998-99 for DNR; and (b) \$77,000 in 1997-98 and \$89,000 in 1998-99 for UW-Extension.

14. Provide \$500,000 on a one-time basis for a study and 2.5 project positions that end on June 30, 1999. Direct DNR, in cooperation with UW-Extension, to conduct a study of the future of solid waste management, including \$150,000 annually and 1.25 project positions for DNR and \$100,000 annually and 1.25 project positions for UW-Extension. The study would include an examination of ways to increase the efficiency and effectiveness of current recycling programs and an examination of ways to improve the coordinated and cost-effective management of solid waste in Wisconsin. DNR would be directed to report its findings and recommendations to the Governor and Legislature within two years. The agencies would not be authorized to encumber the funds until they submit to Joint Finance a plan for conducting the study and a written notice of the proposed encumbrance, for consideration under a 14-day review process.

15. Provide \$300,000 in 1997-98 to the Department of Justice (DOJ) to conduct a study of the solid waste management industry in this state to determine whether there is effective competition in the provision of solid waste services to municipalities, counties, businesses and individuals and whether there are potential violations of state or federal anti-trust laws by such service providers. DOJ would be directed to report its findings to the Legislature within one year.

16. Direct the DNR Secretary to create a Committee to study whether current solid waste landfill designs and operations should be altered to better protect public health, safety and welfare and to reduce the long-term care needed at future landfills. The Committee would be directed to report its recommendations to DNR, the Governor and the Legislature by January 1, 1999.

Note:

The motion would adopt several of the March, 1997, recommendations of the Joint Legislative Council Special Committee on the Future of Recycling, such as to: (a) maintain municipal and county recycling grants at \$24 million annually (the 1997-98 level under current law) through 2004; (b) extend the temporary recycling surcharge by five years, reduce the rate by one-half and expand exemptions (revenues would decline by almost two-thirds); (c) fund the RMDB at \$2.8 million annually; (d) recreate the tire fee at \$20 per car; and (e) provide \$1.35 million in one-time research and public education funding.

If the motion and all of the Governor's recommendations related to use of recycling fund monies are approved, the recycling fund would be in deficit by approximately \$12.8 million on June 30, 1999. The Governor's recommendations include \$20,000,000 for a Commerce brownfields grant program, \$4,000,000 for a WHEDA brownfields loan guarantee program and \$500,000 for DOA geographic information systems.

Under the motion, ongoing recycling fund expenditures in 1998-99 (excluding one-time items) would be approximately \$33.2 million while ongoing revenues would be approximately \$22.6 million. If the motion and the Governor's recommendation to recreate the waste tire fee as a \$5 per vehicle fee are both approved, the total fee would be \$25 per car (\$20 to the recycling fund and \$5 to the environmental fund).

[Revenue Change to Base: -\$13,900,000 SEG-REV]

[Revenue Change to Bill: -\$13,900,000 SEG-REV]

[Funding Change to Base: -\$176,500 SEG and 2.5 SEG positions]

[Funding Change to Bill: \$11,509,500 SEG and 2.5 SEG positions]

MO#

3245

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| GEORGE    | Y | N | A |
| JAUCH     | Y | N | A |
| WINEKE    | Y | N | A |
| SHIBILSKI | Y | N | A |
| COWLES    | Y | N | A |
| PANZER    | Y | N | A |
| JENSEN    | Y | N | A |
| OURADA    | Y | N | A |
| HARSDORF  | Y | N | A |
| ALBERS    | Y | N | A |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| LINTON    | Y | N | A |
| COGGS     | Y | N | A |

COMMERCE

Brownfields Grant Program [LFB Paper #606]

Motion:

Move to modify the provisions of SB 77 to require that 75% of the amount appropriated for the brownfields grant program be awarded for remediation and redevelopment projects located in municipalities or counties with populations of less than 500,000.

Note:

Under the brownfields grant program, Commerce would be required to award: (a) a total of \$3 million in grants that did not exceed \$300,000; (b) a total of \$7 million in grants that would be greater than \$300,000 but did not exceed \$700,000; and (c) a total of \$10 million in grants that would be greater than \$700,000, but did not exceed \$5 million. The maximum grant that could be awarded would be \$5 million. The Department would also be required to award at least seven grants for projects that would be located in municipalities with a population of less than 30,000.

This motion would also require the Department to award 75% of the amount appropriated for a fiscal year to projects in municipalities or counties with population of less than 500,000.

MO#

5050

|           |   |   |   |
|-----------|---|---|---|
| BURKE     | Y | N | A |
| DECKER    | Y | N | A |
| GEORGE    | Y | N | A |
| JAUCH     | Y | N | A |
| WINEKE    | Y | N | A |
| SHIBILSKI | Y | N | A |
| COWLES    | Y | N | A |
| PANZER    | Y | N | A |
| JENSEN    | Y | N | A |
| OURADA    | Y | N | A |
| HARSDORF  | Y | N | A |
| ALBERS    | Y | N | A |
| GARD      | Y | N | A |
| KAUFERT   | Y | N | A |
| LINTON    | Y | N | A |
| COGGS     | Y | N | A |

Motion #5050

AYE 10 NO 6 ABS 0

COMMERCE

Brownfields Grant Program

Motion:

Move to delete \$20 million SEG from the recycling fund for the brownfields grant program in the Department of Commerce. Create a new business surcharge based on the current recycling surcharge with the following modifications to: (a) reduce the surcharge rate from 5.5% to 2.75% (0.217% for sole proprietorships and partnerships); (b) exempt businesses with gross receipts of less than \$1 million; (c) exempt noncorporate farms; (d) eliminate the sunset of the surcharge and establish the surcharge as a permanent funding source for the Brownfields grant program. Provide funding of \$13.3 million SEG in 1997-98 and \$13.8 million SEG in 1998-99.

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Note:

SB 77 would provide \$20 million in recycling fund SEG in 1997-98 in a continuing appropriation to create a brownfields grant program administered by the Department of Commerce. The Department would be authorized to make grants to individuals, partnerships, corporations, limited liability companies, associations, organizations and municipalities to fund brownfields redevelopment projects and associated environmental remediation activities. Grants could not be made unless the party that was responsible for the actual or perceived environmental contamination of the facility or site that would be the subject of the project was unknown or could not be located. Grant recipients would contribute a specified proportionate share of the cost of the project in the form of cash or in-kind contributions in the form of actual remediation services. Grants would range from \$300,000 to a maximum of \$5 million and Commerce would be required to award a certain percentage of grants of varying amounts. The Department would be authorized to promulgate rules to administer the program. In awarding grants, Commerce would be required to consider the recommendations of the Department of Administration and the Department of Natural Resources and follow certain criteria. Brownfields would be defined as abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

This motion would delete the \$20 million SEG funding for the brownfields grant program and establish a new business surcharge as a permanent funding source.

[Change to Base: \$27,100,000 SEG]

[Change to Bill: \$7,100,000 SEG]

MO# 7004

|           |     |     |   |  |
|-----------|-----|-----|---|--|
| BURKE     |     |     |   |  |
| DECKER    | (Y) | N   | A |  |
| GEORGE    | (Y) | N   | A |  |
| JAUCH     | (Y) | N   | A |  |
| WINEKE    | (Y) | N   | A |  |
| SHIBILSKI | (Y) | N   | A |  |
| COWLES    | (Y) | N   | A |  |
| PANZER    | (Y) | N   | A |  |
| JENSEN    | Y   | (N) | A |  |
| OURADA    | Y   | (N) | A |  |
| HARSDORF  | Y   | (N) | A |  |
| ALBERS    | Y   | (N) | A |  |
| GARD      | Y   | (N) | A |  |
| KAUFERT   | Y   | (N) | A |  |
| LINTON    | (Y) | (N) | A |  |
| COGGS     | (Y) | N   | A |  |

AYE 6 NO 10 ABS 0

COMMERCE

Brownfields Grant Program

Motion:

Move to delete the \$20 million SEG funding from the recycling fund for the brownfields grant program in the Department of Commerce. Instead, provide \$10 million GPR in one-time funding in each year of the biennium for the program.

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Note:

SB 77 would provide \$20 million in recycling fund SEG in 1997-98 in a continuing appropriation to create a brownfields grant program administered by the Department of Commerce. The Department would be authorized to make grants to individuals, partnerships, corporations, limited liability companies, associations, organizations and municipalities to fund brownfields redevelopment projects and associated environmental remediation activities. Grants could not be made unless the party that was responsible for the actual or perceived environmental contamination of the facility or site that would be the subject of the project was unknown or could not be located. Grant recipients would contribute a specified proportionate share of the cost of the project in the form of cash or in-kind contributions in the form of actual remediation services. Grants would range from \$300,000 to a maximum of \$5 million and Commerce would be required to award a certain percentage of grants of varying amounts. The Department would be authorized to promulgate rules to administer the program. In awarding grants, Commerce would be required to consider the recommendations of the Department of Administration and the Department of Natural Resources and follow certain criteria. Brownfields would be defined as abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

This motion would delete the \$20 million SEG funding for the brownfields grant programs from the recycling fund, and instead, provide \$10 million GPR annually in one-time funding.

[Change to Base: \$20,000,000 GPR]

[Change to Bill: \$20,000,000 GPR and -\$20,000,000 SEG]

MO# 5018

|           |                                     |                                     |   |
|-----------|-------------------------------------|-------------------------------------|---|
| 1 BURKE   | <input checked="" type="checkbox"/> | N                                   | A |
| 2 DECKER  | <input checked="" type="checkbox"/> | N                                   | A |
| GEORGE    | <input checked="" type="checkbox"/> | N                                   | A |
| JAUCH     | <input checked="" type="checkbox"/> | N                                   | A |
| WINEKE    | <input checked="" type="checkbox"/> | N                                   | A |
| SHIBILSKI | <input checked="" type="checkbox"/> | N                                   | A |
| COWLES    | Y                                   | <input checked="" type="checkbox"/> | A |
| PANZER    | Y                                   | <input checked="" type="checkbox"/> | A |
|           |                                     |                                     |   |
| JENSEN    | Y                                   | <input checked="" type="checkbox"/> | A |
| OURADA    | Y                                   | <input checked="" type="checkbox"/> | A |
| HARSDORF  | Y                                   | <input checked="" type="checkbox"/> | A |
| ALBERS    | Y                                   | <input checked="" type="checkbox"/> | A |
| GARD      | Y                                   | <input checked="" type="checkbox"/> | A |
| KAUFERT   | Y                                   | <input checked="" type="checkbox"/> | A |
| LINTON    | <input checked="" type="checkbox"/> | N                                   | A |
| COGGS     | <input checked="" type="checkbox"/> | N                                   | A |

AYE 8 NO 8 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Brownfields Redevelopment Loan Guarantee Program (WHEDA)**

[LFB Summary: Page 649, #1]

## CURRENT LAW

WHEDA administers several loan guarantee programs related to business development and environmental contamination remediation and pollution abatement. The loan guarantee programs are backed by the Wisconsin Development Reserve Fund (WDRF), which must contain one dollar in its cash balance for every four dollars in total outstanding guarantees (However, previous Committee action increased the reserve ratio to require one dollar in reserves for every \$4.50 in total outstanding guarantees).

## GOVERNOR

Provide \$4,000,000 SEG in 1997-98 from the recycling fund to the Wisconsin development reserve fund (WDRF) to guarantee loans under a brownfields redevelopment loan guarantee program. Beginning July 1, 1998, WHEDA would be allowed to guarantee repayment of up to 80% of the principal of an eligible brownfields redevelopment loan. The outstanding principal amount of loans guaranteed would not be allowed to exceed \$500,000. The Authority would be allowed to establish the percentage of the unpaid principal of an eligible loan that will be guaranteed (not to exceed 80%) under agreement with the participating lender. WHEDA would have the authority to establish one guarantee percentage for all loans or establish different percentages for different loans.

A loan made by a participating lender would be eligible for a guarantee if all of the following apply:

- a. The borrower is a business in the state;
- b. As determined by WHEDA, the borrower uses the loan proceeds for direct or related expenses, associated with the redevelopment of brownfields and environmental remediation activities;
- c. The loan proceeds are not applied to the outstanding balance of any other loan;
- d. WHEDA approves the interest rate on the loan, including any origination fees or other charges;
- e. The lender obtains a security interest in any equipment, machinery, physical plant or other assets to secure repayment of the loan.
- f. The term of the loan does not extend beyond 15 years after the date on which the lender disburses the loan unless WHEDA agrees to an extension;
- g. The lender considers the borrowers assets, cash flow, and managerial ability sufficient to preclude voluntary or involuntary liquidation for the term of the loan; and
- h. The lender agrees to WHEDA's guarantee percentage established for the loan.

## **DISCUSSION POINTS**

### **Loan Guarantee Authority**

1. Although the \$4 million appropriated would be sufficient to guarantee of \$22.5 million in loans under a 4:5 to 1 reserve ratio (assuming an 80% guarantee on the loans), outstanding principal amount of loans guaranteed would not be allowed to exceed \$500,000 under the bill. In an April 14, 1997, letter to the Committee, DOA indicates that it was intended that \$500,000 be the per loan limit (\$400,000 in guaranteed principal) rather than the overall guarantee limit for the program required under the bill.
2. While the changes proposed by DOA would limit loans to \$500,000 (\$400,000 in guaranteed principal), the changes would not place an overall loan guarantee limit on the brownfields loan guarantee program. All other WHEDA loan guarantee programs have a loan guarantee limit. Using the 4.5:1 reserve ratio proposed by the Governor and adopted in previous Joint Finance action, the \$4.0 million provided the WDRF under the bill could guarantee up to \$22.5 million in loans at the maximum 80% guarantee rate.

### **Recycling Transfer**

3. Under the bill, the brownfields loan guarantee program would be funded from a \$4.0 million transfer from the recycling fund. It could be argued that the intent of the legislation that created the recycling fund surcharge was that the revenues generated were to be spent on recycling collection programs and recycling market development. Under this view, the recycling surcharge revenues and any recycling fund balance should be used to fund only recycling programs. The Committee could decide that this proposed use of recycling funding is inappropriate and not provide the funding to the WDRF to back a brownfields redevelopment loan guarantee program.

4. Alternatively, to reduce the immediate impact on the recycling fund, the Committee could consider transferring the funds only as guarantees are made. Under this alternative, funds necessary to maintain \$1 dollar in reserves for every \$4.5 in guaranteed principal would be transferred to WHEDA's WDRF. As a result, the funds proposed to be transferred in 1997-98 would remain in the recycling fund balance longer (at least until 1998-99) and the interest on those funds would accrue to the recycling fund rather than the WDRF.

5. However, under its other guarantee programs, WHEDA covers much of its administrative costs associated with issuing loan guarantees from the balance in the WDRF. The WDRF is funded from the direct appropriation of funds, origination or other fees associated with making loans, as well as the interest earnings on the fund balance.

6. WHEDA has indicated in the past that the legal and other administrative costs associated with establishing a loan guarantee program would be approximately \$100,000. The estimate is based on the start-up costs associated with WHEDA's other loan guarantee programs. To cover WHEDA's costs associated with establishing the guarantee program, the Committee could transfer \$100,000 from the recycling fund in 1997-98 and allow for the transfer of additional funds as necessary to back any loan guarantees made under the program.

### **Brownfields Redevelopment**

7. Under the bill, the Department of Commerce would administer a grant program to municipalities and business to conduct remediation and redevelopment of brownfield properties. WHEDA would only be allowed to guarantee loans made to businesses. Similar to the Commerce program, WHEDA's program would not be limited to the remediation of contamination at a brownfield site, but could provide loan guarantees for the construction or reconstruction of some type of facility at the site.

8. It could be argued that the brownfield loan guarantee program should be limited to the remediation of contamination at a brownfield site and should not include the provision of funds to construct a facility or develop a site economically. Limiting the program to remediation would likely reduce the overall level of guarantees needed to meet the program demand.

WHEDA and Commerce have other economic development direct loan and loan guarantee programs that could be used to fund the development of these properties.

9. However, most of WHEDA's loan and guarantee programs involve private business and housing development activities that are expected to generate additional revenues to repay the loan. The remediation of contamination would not, by itself, allow for the generation of additional revenues to support a loan. Therefore, under such a program, it would be uncertain how many guarantees could be made and the viability of any loans that would be guaranteed. WHEDA currently has similar environmental related loan guarantee programs that only fund those activities that bring the borrower into compliance with environmental regulations, such as the agrichemical cleanup, clean air act, stratospheric ozone and nonpoint source pollution abatement loan guarantee programs (previous Committee action deleted these programs and replaced them with a small business loan guarantee program). The total guarantee authority of these programs is \$2.9 million. To date, these programs have been largely unused with only two loans for a total of \$8,000 in guarantees.

10. Further, WHEDA's primary mission is to provide financing for affordable housing for low- and moderate-income people and business development rather than being involved in more environmental regulatory projects such as brownfield remediation. As a result, WHEDA's expertise related to providing financing to entities to meet environmental concerns is limited. Further, WHEDA officials indicate that programs aimed at specific environmental concerns and that require specialized technical expertise are difficult to market to lenders in that WHEDA has to educate the state's financial community about the availability and requirements of the programs. On the other hand, since environmental remediation at brownfield sites may be critical to the economic revitalization of the site or surrounding area, a brownfields remediation program could be viewed as integral to an economic development program.

11. The \$4 million would guarantee approximately 55 (at the \$500,000 maximum per loan principal amount) to 100 loans. A more limited program could be considered. Providing \$2 million would allow for about one-half the number of guarantees compared to the bill.

## **ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation, to provide \$4,000,000 SEG from the recycling fund to the WDRF to guarantee loans under a brownfields redevelopment loan guarantee program. Further, incorporate DOA's recommended change to make \$500,000 as the per loan limit rather than the overall guarantee limit for the program.

2. Modify the Governor's recommendation to provide \$100,000 SEG in 1997-98 to WHEDA for the start-up costs associated with the creation of a brownfields redevelopment loan guarantee program. Further, transfer additional funds up to \$3.9 million from the recycling fund to the WDRF to provide \$1 in reserves for every \$4.50 in loan guarantees under the program (the

WHEDA (Paper #607)

Brownfields Loan Guarantee Program

Motion:

Move alternative 2 in Legislative Fiscal Bureau paper #607, however, replace the recycling fund SEG with GPR.

Note:

The motion would provide WHEDA with \$100,000 GPR, and allow for the transfer of up to \$3.9 million in GPR to the WDRF as needed to maintain \$1 in reserves for every \$4.50 in brownfield loan guarantees rather than using recycling fund monies as proposed in SB 77 and alternative 2 of LFB paper #607. While \$100,000 GPR in 1997-98 would be needed for start-up costs associated with the program, GPR expenditures could be as high as \$4.0 million in the biennium. However, because the program would be newly created and based on startup of the WHEDA recycling program, it is estimated that GPR expenditures for loan guarantees could be \$250,000 in 1998-99.

[Change to Bill: \$350,000 GPR and -\$4,000,000 SEG]

MO# 5005

|           |     |     |   |
|-----------|-----|-----|---|
| 1 BURKE   | (Y) | N   | A |
| 2 DECKER  | (Y) | N   | A |
| GEORGE    | (Y) | N   | A |
| JAUCH     | (Y) | N   | A |
| WINEKE    | (Y) | N   | A |
| SHIBILSKI | (Y) | N   | A |
| COWLES    | (Y) | (N) | A |
| PANZER    | Y   | (N) | A |
| JENSEN    | Y   | (N) | A |
| OURADA    | Y   | (N) | A |
| HARSDORF  | Y   | (N) | A |
| ALBERS    | Y   | (N) | A |
| GARD      | Y   | (N) | A |
| KAUFERT   | Y   | (N) | A |
| LINTON    | (Y) | N   | A |
| COGGS     | (Y) | N   | A |

AYE 8 NO 8 ABS 0

amount of funds to be transferred from the recycling fund would depend on the loan guarantee program demand). Finally, limit the outstanding principal amount of loans guaranteed to not more than \$22.5 million.

| <u>Alternative 2</u>             | <u>SEG</u>    |
|----------------------------------|---------------|
| 1997-99 FUNDING (Change to Bill) | - \$3,900,000 |

3. Modify the Governor's recommendation to set the total outstanding principal amount of loans guaranteed at \$11.2 million and provide a total of up to \$2 million from the recycling fund (rather than \$4 million under SB 77). Provide \$100,000 SEG in 1997-98 and up to \$1.9 million, as necessary, to provide \$1 in reserve for each \$4.50 in guarantees issued. (The recycling fund balance would increase by at least \$2 million.)

| <u>Alternative 3</u>             | <u>SEG</u>    |
|----------------------------------|---------------|
| 1997-99 FUNDING (Change to Bill) | - \$3,900,000 |

4. In addition to one of the above, limit the loan guarantee program to include only the costs associated with remediation of contamination at a brownfield site.

5. Maintain current law (\$4,000,000 would be retained in the recycling fund).

| <u>Alternative 5</u>             | <u>SEG</u>    |
|----------------------------------|---------------|
| 1997-99 FUNDING (Change to Bill) | - \$4,000,000 |

MO# Alt 4

|           |          |          |   |
|-----------|----------|----------|---|
| BURKE     | Y        | <u>N</u> | A |
| DECKER    | Y        | <u>N</u> | A |
| GEORGE    | Y        | <u>N</u> | A |
| JAUCH     | <u>Y</u> | <u>N</u> | A |
| WINEKE    | <u>Y</u> | <u>N</u> | A |
| SHIBILSKI | <u>Y</u> | <u>N</u> | A |
| COWLES    | <u>Y</u> | <u>N</u> | A |
| PANZER    | <u>Y</u> | <u>N</u> | A |
| JENSEN    | <u>Y</u> | <u>N</u> | A |
| OURADA    | <u>Y</u> | <u>N</u> | A |
| HARSDORF  | <u>Y</u> | <u>N</u> | A |
| ALBERS    | <u>Y</u> | <u>N</u> | A |
| GARD      | <u>Y</u> | <u>N</u> | A |
| KAUFERT   | <u>Y</u> | <u>N</u> | A |
| LINTON    | <u>Y</u> | <u>N</u> | A |
| COGGS     | <u>Y</u> | <u>N</u> | A |

AYE 10 NO 6 ABS 0

MO# Alt 5

|           |          |          |   |
|-----------|----------|----------|---|
| BURKE     | <u>Y</u> | <u>N</u> | A |
| DECKER    | <u>Y</u> | <u>N</u> | A |
| GEORGE    | <u>Y</u> | <u>N</u> | A |
| JAUCH     | <u>Y</u> | <u>N</u> | A |
| WINEKE    | <u>Y</u> | <u>N</u> | A |
| SHIBILSKI | <u>Y</u> | <u>N</u> | A |
| COWLES    | <u>Y</u> | <u>N</u> | A |
| PANZER    | <u>Y</u> | <u>N</u> | A |
| JENSEN    | <u>Y</u> | <u>N</u> | A |
| OURADA    | <u>Y</u> | <u>N</u> | A |
| HARSDORF  | <u>Y</u> | <u>N</u> | A |
| ALBERS    | <u>Y</u> | <u>N</u> | A |
| GARD      | <u>Y</u> | <u>N</u> | A |
| KAUFERT   | <u>Y</u> | <u>N</u> | A |
| LINTON    | <u>Y</u> | <u>N</u> | A |
| COGGS     | <u>Y</u> | <u>N</u> | A |

AYE 8 NO 8 ABS 0

MO# Alt 2

|           |          |          |   |
|-----------|----------|----------|---|
| BURKE     | <u>Y</u> | <u>N</u> | A |
| DECKER    | <u>Y</u> | <u>N</u> | A |
| GEORGE    | <u>Y</u> | <u>N</u> | A |
| JAUCH     | <u>Y</u> | <u>N</u> | A |
| WINEKE    | <u>Y</u> | <u>N</u> | A |
| SHIBILSKI | <u>Y</u> | <u>N</u> | A |
| COWLES    | <u>Y</u> | <u>N</u> | A |
| PANZER    | <u>Y</u> | <u>N</u> | A |
| JENSEN    | <u>Y</u> | <u>N</u> | A |
| OURADA    | <u>Y</u> | <u>N</u> | A |
| HARSDORF  | <u>Y</u> | <u>N</u> | A |
| ALBERS    | <u>Y</u> | <u>N</u> | A |
| GARD      | <u>Y</u> | <u>N</u> | A |
| KAUFERT   | <u>Y</u> | <u>N</u> | A |
| LINTON    | <u>Y</u> | <u>N</u> | A |
| COGGS     | <u>Y</u> | <u>N</u> | A |

AYE 16 NO 0 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Brownfields -- Funding Changes (Natural Resources -- Air, Waste and Contaminated Land)**

[LFB Summary: Page 419, #11]

## CURRENT LAW

The Air and Waste Division's Bureau for Remediation and Redevelopment is responsible for administration of laws to clean up contaminated properties. Adjusted base funding in 1996-97 for staff totals \$6,592,400 for 105 positions, including: (a) \$2,692,200 FED and 43.5 FED positions; (b) \$1,847,500 environmental fund SEG and 27.0 positions; (c) \$975,800 GPR and 16 positions; (d) \$697,100 petroleum inspection fund SEG and 12.0 project positions which end on June 30, 1997; (e) \$298,200 PR and 5.5 positions; and (f) \$81,600 recycling fund SEG and 1.0 position.

## GOVERNOR

Provide \$713,200 in 1997-98 and \$730,200 in 1998-99 and 13.0 positions for a brownfields program to clean up contaminated properties that are not being utilized to their full economic potential. Sites would include tax delinquent sites, spills sites, leaking underground storage tank sites, former landfills and sites with abandoned containers. The funding would include: (a) \$487,400 SEG in 1997-98 and \$504,400 SEG in 1998-99 and 9.0 SEG positions from the environmental fund; and (b) \$225,800 petroleum inspection fund SEG annually with 4.0 SEG positions. The initiative would consist of the following funding changes:

- a. *Cost Containment.* Provide \$111,200 SEG annually from the petroleum inspection fund to convert 2.0 positions from project to permanent status to review and analyze the

effectiveness of new engineered cleanup systems on an ongoing basis. The project positions and associated funding terminate on June 30, 1997, and are deleted under standard budget adjustments.

b. *Municipal Brownfields Environmental Assessment Program.* Provide \$140,000 SEG in 1997-98 and \$153,700 SEG in 1998-99 from the environmental fund and 3.0 positions to continue a brownfields environmental assessment pilot started in 1995 with federal Superfund project positions. The positions would conduct environmental assessments for selected municipalities to determine the extent of contamination at abandoned properties and recommend further investigatory work, develop technical guidance and train staff in customer service and environmental sampling.

c. *Brownfields Redevelopment Assistance Team.* Provide \$293,400 SEG in 1997-98 and \$301,200 SEG in 1998-99 from the environmental fund with 6.0 positions and \$114,600 SEG annually from the petroleum inspection fund to convert 2.0 positions from project to permanent status. The positions would assist with site cleanup and closure of contaminated properties, assist property owners and municipalities in the area of brownfield redevelopment, provide public outreach and training on DNR administrative rules (NR 700 series) related to cleanup of contaminated property, provide technical assistance on determining site-specific soil standards and implementing closure flexibility for sites with contaminated groundwater and provide "comfort letters" to purchasers, lenders, sellers and lessees of property that may be contaminated.

d. *Information Streamlining and Efficiency Project.* Provide \$54,000 SEG in 1997-98 and \$49,500 SEG in 1998-99 from the environmental fund as one-time funding to hire a management consultant to evaluate and recommend methods to improve and streamline the data system for the brownfields program.

## DISCUSSION POINTS

1. The positions provided under the bill would replace 13.0 of 21.5 positions deleted under the bill: (a) 9.5 federal Superfund and leaking underground storage tank program positions deleted to reflect reductions in or noncontinuing federal funding; and (b) 12 petroleum inspection fund project positions that end June 30, 1997. Under SB 77, positions provided in the remediation and redevelopment subprogram would decrease from 105 to 96.5.

2. DNR estimates that there are 8,000 "brownfields" statewide, which are abandoned or underused properties that are contaminated or suspected to be contaminated.

3. During 1995-97, DNR reallocated up to 10 FED Superfund positions, 6.5 of which have ended or will be deleted under the bill, two GPR positions and up to five environmental fund SEG positions to brownfields activities. Activities include site assessment and site review under the U.S. Environmental Protection Agency (EPA) brownfields environmental assessment

program, under which DNR is conducting assessments of 23 properties that are tax-delinquent or have bankrupt responsible parties, in order to determine the presence or absence of contamination. DNR also reviewed 62 applications under the purchaser limited liability program enacted in 1993 Act 453, which certifies a purchaser's exemption from liability under the hazardous substances spill law if the purchaser satisfactorily completes an investigation and cleanup.

4. In addition to the allocated staff during 1995-97, beginning in 1996-97, DNR is authorized 3.0 PR positions funded from the fees from purchasers under the purchaser limited liability program. To date, DNR has not filled any of the 3.0 PR positions because fees have totalled approximately \$70,300 to date instead of the \$151,200 that would have been required to fund all three positions for the entire year. DNR estimates that under the staffing and language changes under the bill, there will be sufficient revenues generated to fill the three authorized positions and possibly additional positions. If DNR generates more fee revenues than needed to fill the three authorized positions, it could request additional PR positions and expenditure authority through the s. 16.505/515 process or could request conversion of GPR or SEG positions through s. 13.10.

5. The 13.0 positions provided under the bill would: (a) incorporate the cost containment review practices into day-to-day site review that were begun in the PECFA cost-effectiveness project during 1996-97; (b) continue the brownfields assessment pilot started in 1995; and (c) provide technical assistance to persons under current brownfields-related statutes and changes proposed under the bill. DNR and DOA indicate that the positions are needed for current core activities, but will also perform activities related to statutory changes under the bill related to technical assistance and certification of liability exemption or completion of cleanup, for which DNR would be authorized to charge fees to recover its costs.

6. DNR indicates that the positions are critical to making brownfields initiatives succeed and that without the positions, the Department would be limited in its ability to assist owners, municipalities, developers and potential purchasers of brownfields sites.

7. The information streamlining funds provided under the bill would be used to develop methods of managing data about brownfields sites, work with DOA and Commerce on sharing of data and developing links with geographic information system data. Since DNR would charge fees to recover its costs under several of the SB 77 brownfields provisions but no additional program revenue expenditures are included in the bill, one alternative would be to convert the data consulting funding from environmental fund SEG to PR. Further, this would reduce the environmental fund deficit by \$103,500 (from \$240,000 to \$136,500).

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to provide \$713,200 in 1997-98 and \$730,200 in 1998-99 and 13.0 positions for brownfields program activities, including: (a) \$487,400 SEG in 1997-98 and \$504,400 SEG in 1998-99 with 9.0 SEG positions from the environmental fund; and (b) \$225,800 petroleum inspection fund SEG and 4.0 SEG positions annually.

| <u>Alternative 1</u>               | <u>SEG</u>  |
|------------------------------------|-------------|
| 1997-99 FUNDING (Change to Base)   | \$1,443,400 |
| [Change to Bill]                   | \$0]        |
| 1998-99 POSITIONS (Change to Base) | 13.00       |
| [Change to Bill]                   | 0.00]       |

2. Approve the Governor's recommendation, except provide \$54,000 in 1997-98 and \$49,500 in 1998-99 in one-time funding as PR rather than environmental fund SEG.

| <u>Alternative 2</u>               | <u>SEG</u>  | <u>PR</u> | <u>TOTAL</u> |
|------------------------------------|-------------|-----------|--------------|
| 1997-99 FUNDING (Change to Base)   | \$1,339,900 | \$103,500 | \$1,443,400  |
| [Change to Bill]                   | - \$103,500 | \$103,500 | \$0]         |
| 1998-99 POSITIONS (Change to Base) | 13.00       | 0.00      | 13.00        |
| [Change to Bill]                   | 0.00        | 0.00      | 0.00]        |

3. Maintain current law.

| <u>Alternative 3</u>               | <u>SEG</u>     |
|------------------------------------|----------------|
| 1997-99 FUNDING (Change to Base)   | \$0            |
| [Change to Bill]                   | - \$1,443,400] |
| 1998-99 POSITIONS (Change to Base) | 0.00           |
| [Change to Bill]                   | - 13.00]       |

MO# Alt 2

|             |                                  |   |   |
|-------------|----------------------------------|---|---|
| BURKE       | <input checked="" type="radio"/> | N | A |
| DECKER      | <input checked="" type="radio"/> | N | A |
| GEORGE      | <input checked="" type="radio"/> | N | A |
| JAUCH       | <input checked="" type="radio"/> | N | A |
| WINEKE      | <input checked="" type="radio"/> | N | A |
| SHIBILSKI   | <input checked="" type="radio"/> | N | A |
| COWLES      | <input checked="" type="radio"/> | N | A |
| PANZER      | <input checked="" type="radio"/> | N | A |
| ra Bonderud |                                  |   |   |
| JENSEN      | <input checked="" type="radio"/> | N | A |
| OURADA      | <input checked="" type="radio"/> | N | A |
| HARSDORF    | <input checked="" type="radio"/> | N | A |
| ALBERS      | <input checked="" type="radio"/> | N | A |
| GARD        | <input checked="" type="radio"/> | N | A |
| KAUFERT     | <input checked="" type="radio"/> | N | A |
| LINTON      | <input checked="" type="radio"/> | N | A |
| COGGS       | <input checked="" type="radio"/> | N | A |

AYE 16 NO 0 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Brownfields -- Property Affected by Off-Site Discharges (Natural Resources -- Air, Waste and Contaminated Land)**

[LFB Summary: Page 420, #13]

## CURRENT LAW

A person who possesses, controls or causes the discharge of a hazardous substance is required to notify DNR and take actions necessary to restore the environment to the extent practicable. DNR may require that the person take preventive measures and may specify necessary preventive measures by order. If DNR determines that the person is not taking the necessary actions or the person responsible is unknown, DNR may take the necessary actions to respond to the discharge. If a responsible party is identified, the party is required to reimburse DNR for expenses incurred.

## GOVERNOR

Exempt a person who owns land where a hazardous substance is present in the soil or groundwater from the current provisions of the spills law if: (a) the discharge of the hazardous substance originated from a source on property that is owned by another person; and (b) the person did not possess or control the hazardous substance on the other property or cause the original discharge.

Authorize DNR to, upon request, issue a written determination that, based on information available to DNR, the person is not required to respond to the discharge or reimburse DNR for the costs of responding to the discharge if: (a) DNR determines that the person qualifies for the exemption from liability; (b) the person agrees to allow DNR and any authorized representatives

of DNR to enter the property to take action to respond to the discharge; (c) the person agrees to avoid any interference with actions taken by DNR or at the direction of DNR and to avoid actions that worsen the discharge; and (d) the person agrees to any other condition that DNR determines is reasonable and necessary to ensure that DNR can adequately take action to respond to the discharge.

Authorize DNR to promulgate administrative rules to assess fees to offset the costs of issuing determinations.

## **DISCUSSION POINTS**

1. While the spills law requires the person who possesses, controls or caused a discharge to cleanup the contamination, often the person who possesses or controls the discharge is not the person who caused the contamination. In this situation, the person who possesses or controls the discharge can take legal action against the person who caused the contamination to cleanup or recover the cost of cleaning up the contamination. If the off-site responsible party is unknown or unwilling, the person who possesses or controls the discharge would be responsible for cleaning up the property. Currently, when a property has groundwater contamination that originates from an off-site source that was caused or controlled by another person, DNR has enforcement discretion to seek the off-site (neighboring) responsible party from where the spill originated to cleanup the contamination rather than the on-site possessing party, especially when the on-site party is not able to take necessary cleanup actions.

2. The bill would benefit persons who own property contaminated by a neighbor. The exemption could allow the owner of the contaminated property to redevelop the property for a productive use.

3. The bill could reduce the incentive for the property owner from the originating spill to cleanup the property because he or she would no longer face a threat of legal action from neighboring property owners. However, DNR would continue to be authorized to take action to require the originating responsible party to cleanup the contamination.

4. The bill could lead to different liability standards on adjacent properties purchased by two different parties. For example, if properties A and B are contaminated by a discharge that was caused by the prior owner of property A, the new owner of property B would be eligible for the exemption under the bill, but the new owner of property A would not. However, the new owner of property A could cleanup the discharge caused by the prior owner and seek an exemption from future liability under the current purchaser limited liability program.

5. It could be argued that a person who possesses or controls contamination that was caused by a neighboring property should not have to pay for the cleanup. However, the SB 77 exemption could shift cleanup costs from persons who possess or control contamination to the

state if the contamination is a high priority, poses a threat to public health, safety, welfare or the environment, or if DNR can not identify a responsible party that is able to pay for the cleanup. If the state-funded spills appropriation would not have sufficient funds to pay for the cleanup (\$3,239,500 annually under SB 77), the contamination would remain on the site.

6. The exemption would be available to any person who meets the criteria in the bill. A person could request DNR to issue a written determination, or "comfort letter" that the person meets the necessary requirements and DNR could assess a fee for providing the written determination. DNR indicates that, eventually, there could be up to 100 requests annually for off-site written determinations. At an average cost of approximately \$500 per request, this could generate \$50,000 annually in fee revenues. DNR estimates that perhaps half this amount would be received in 1998-99.

7. DNR suggests that the bill be amended to allow the exemption only in the following situations (in addition to the SB 77 requirement that the person did not possess or control the hazardous substance on the property on which the discharge originated or cause the original discharge): (a) the off-site source was possessed or controlled by another person (rather than the SB 77 requirement that the discharge originate on property owned by another); (b) the person conducts an adequate investigation approved by DNR; (c) the person allows reasonable access to the site to DNR, its representatives, responsible parties, consultants or their contractors to enter the property to take action to respond to the discharge (instead of the SB 77 requirement that the person allow the Department and its representatives to enter the property to take action to respond to the discharge); (d) the person acquired the property prior to the discharge of a hazardous substance which originated from an off-site source possessed or controlled by another person; and (e) the person takes all necessary emergency actions to prevent threats to human health, safety, welfare or the environment and who takes all non-emergency immediate or interim actions that are necessary to prevent a new or continuing release of the hazardous substance into the environment. In addition, DNR recommends that the Department be authorized to revise or revoke the exemption if any of the criteria for exemption would no longer be met. The Department argues that the suggested amendments would be more protective of the public health, safety, welfare and the environment. On the other hand, the provisions could limit eligibility for the exemption, increase landowner costs and, potentially, limit state cleanup costs.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to provide certain exemptions from the spills law for a discharge that originated off-site if certain conditions are met.

| <u>Alternative 1</u>             | <u>PR</u> |
|----------------------------------|-----------|
| 1997-99 REVENUE (Change to Base) | \$25,000  |
| [Change to Bill]                 | \$25,000] |

2. Modify the Governor's recommendation so that, in addition to the SB 77 requirement, that the person did not possess or control the hazardous substance on the property on which the discharge originated or cause the original discharge, to allow the exemption only in one or more of the following situations:

- a. the off-site source was possessed or controlled by another person;
- b. the person conducts an adequate investigation approved by DNR;
- c. the person allows reasonable access to the site to DNR, its representatives, responsible parties, consultants or their contractors to enter the property to take action to respond to the discharge;
- d. the person acquired the property prior to the discharge of a hazardous substance which originated from an off-site source possessed or controlled by another person;
- e. the person takes all necessary emergency actions to prevent threats to human health, safety, welfare or the environment and takes all non-emergency immediate or interim actions that are necessary to prevent a new or continuing release of the hazardous substance into the environment. In addition, authorize DNR to revise or revoke the exemption if any of the criteria for exemption would no longer be met.

3. Maintain current law.

MO# 2 a, b, c, e

|          |           |                                     |   |   |
|----------|-----------|-------------------------------------|---|---|
| Prepared | BURKE     | <input checked="" type="checkbox"/> | N | A |
|          | DECKER    | <input checked="" type="checkbox"/> | N | A |
|          | GEORGE    | <input checked="" type="checkbox"/> | N | A |
|          | JAUCH     | <input checked="" type="checkbox"/> | N | A |
|          | WINEKE    | <input checked="" type="checkbox"/> | N | A |
|          | SHIBILSKI | <input checked="" type="checkbox"/> | N | A |
|          | COWLES    | <input checked="" type="checkbox"/> | N | A |
|          | PANZER    | <input checked="" type="checkbox"/> | N | A |
|          | JENSEN    | <input checked="" type="checkbox"/> | N | A |
|          | OURADA    | <input checked="" type="checkbox"/> | N | A |
|          | HARSDORF  | <input checked="" type="checkbox"/> | N | A |
|          | ALBERS    | <input checked="" type="checkbox"/> | N | A |
|          | GARD      | <input checked="" type="checkbox"/> | N | A |
|          | KAUFERT   | <input checked="" type="checkbox"/> | N | A |
|          | LINTON    | <input checked="" type="checkbox"/> | N | A |
|          | COGGS     | <input checked="" type="checkbox"/> | N | A |

AYE 16 NO 0 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director  
Legislative Fiscal Bureau

## ISSUE

### **Brownfields -- Voluntary Party Liability Limitation (Natural Resources -- Air, Waste and Contaminated Land)**

[LFB Summary: Page 421, #15]

## CURRENT LAW

Currently, a person who purchases a property on which a hazardous substance was discharged before the person acquired the property is eligible for an exemption from future cleanup requirements if the purchaser, in a manner approved by DNR, investigates and restores the environment, minimizes the harmful effects of the discharge and maintains and monitors the property.

## GOVERNOR

Apply the current provisions providing certain "purchasers" of property with exemption from environmental liability instead to any voluntary party. Define "voluntary party" as any person who: (a) did not cause the discharge of a hazardous substance on the property; (b) did not control the hazardous substance prior to its discharge; and (c) did not participate in the management, control or ownership of a business or entity that caused the initial release of the hazardous substance on the property.

Exempt a voluntary party who completes these required activities from the following requirements, with respect to the release of a hazardous substance which occurred prior to the date of acquisition of the property: (a) minimum standards for operation, monitoring and maintenance of solid waste facilities; (b) standards for operation, monitoring and maintenance of metallic mining waste disposal facilities; (c) standards for the reuse of foundry sand and other

high-volume industrial waste; (d) certification requirements for persons who operate solid waste disposal facilities; (e) environmental repair fees and surcharges required to be paid by waste generators (50¢ per ton for municipal solid waste or 20¢ per ton for high-volume industrial waste with a base fee of \$100 or \$1,000 annually, and \$12 per ton of hazardous waste with a base fee of \$125 annually); (f) licensing requirements for the treatment, storage and disposal of hazardous waste on the property; (g) requirements to take corrective action to protect human health or the environment from any spill, leak or other release into the environment of a hazardous substance at a facility that stores, treats or disposes of solid or hazardous waste; (h) orders by DNR to take action necessary to protect public health or the environment; (i) license revocation actions under hazardous waste statutes; and (j) liability for repayment of costs incurred by DNR for environmental repair or cleanup of the property. Retain, for voluntary parties, the current liability exemption for purchasers from: (a) the requirement to take future actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge; (b) take measures to prevent a prior discharge; and (c) the obligation to repay DNR for costs of responding to a hazardous substances spill. Specify that the exemption would first apply to persons issued certificates of exemption by DNR on or after the effective date of the biennial budget act.

Make changes in the extent of cleanup that must be completed by a voluntary party. Limit the obligation of the voluntary party to restore the environment "to the extent practicable." Currently, a purchaser who seeks certification of a partial exemption from liability must meet a higher standard of "restoring the environment." Require the cleanup of "discharges," meaning spilling, leaking, pumping, pouring, emitting, emptying or dumping a hazardous substance, instead of "releases," which means the original discharge.

Authorize DNR to approve a partial cleanup by a voluntary party and issue a certificate of completion that states that not all of the property has been satisfactorily restored or that not all of the harmful effects from a discharge of a hazardous substance have been minimized. Specify that approval of a partial cleanup would exempt a voluntary party, with respect to the portion of the property subject to the partial approval, from the spills cleanup law.

Specify that a certificate for partial cleanup may be issued only if: (a) public health, safety or the environment will not be endangered by any hazardous substances remaining on the property after the partial cleanup, given the manner in which the property will be developed and used and any other relevant factors; (b) the activities associated with any proposed use or development of the property will not aggravate or contribute to the discharge of a hazardous substance and will not interfere with or increase the costs of restoring the property and minimizing the harmful effects of the discharge; and (c) the owner of the property agrees to cooperate with DNR to address problems caused by hazardous substances remaining on the property, including allowing access to the property to DNR or its agents to place borings, equipment or structures or to undertake other activities. Authorize DNR to require the owner of the property to grant an easement to DNR to address the hazardous substances on the property.

Specify that the exemption or partial exemption from liability for a voluntary party would not apply to a municipal waste landfill or to an approved solid waste disposal facility. Specify that the exemption or partial exemption would not exempt the property from any lien filed by DNR to recover its costs of cleaning up the property if the lien is filed prior to the date DNR issues a certificate of exemption or partial exemption.

## DISCUSSION POINTS

1. Examples of persons to whom the bill would extend the exemption could include lenders who acquire property through defaults, municipalities who acquire property through tax delinquency or bankruptcy proceedings and persons who inherit contaminated property. Expansion of purchaser limited liability provisions to "voluntary parties" would provide greater flexibility for sellers, purchasers and other parties interested in redeveloping a contaminated property to determine who would cleanup the property. Currently, the purchaser has to complete the cleanup to obtain the liability exemption.

2. The exemption from many solid and hazardous waste disposal laws for the release that occurred prior to the date of acquisition of the property, would provide assurance to sellers, purchasers and developers that if they cleanup the property under the NR 700 cleanup requirements, DNR would not reopen the case under solid and hazardous waste laws. For example, many sites in southeastern Wisconsin have stockpiles of foundry sand (sand waste from industrial processes) that, once cleaned up, would not be subject to solid or hazardous waste disposal laws.

3. The SB 77 provision to allow a voluntary party to obtain approval of a partial cleanup would allow an owner, purchaser, or developer to cleanup and redevelop part of the site, and leave the remaining contamination to be cleaned up in the future. In order to obtain DNR approval of the partial cleanup, the voluntary party would have to cooperate with DNR to address problems caused by hazardous substances remaining on the property. The certificate of partial cleanup would not require the voluntary party to cleanup the remaining contamination by a specific date. It is possible that if the remaining contamination does not endanger public health, safety or the environment, it would remain on the property indefinitely.

4. While an estimate of revenue is not included in the bill, DNR recently estimated that, eventually, there could be up to 80 requests annually from voluntary parties for determination of an exemption from liability, with an average cost of \$1,900, and 15 requests annually for certification of partial cleanup, with an average cost of \$1,500. This could generate \$174,500 annually in fee revenues. DNR estimates that perhaps half this amount would be received in 1998-99.

5. DNR suggests amending the list of requirements that a voluntary party would be exempt from to: (a) delete the exemption under hazardous waste statutes from orders by DNR

to take action necessary to protect public health or the environment; (b) delete the exemption from hazardous waste license revocation actions; and (c) add an exemption from closure and long-term care plan requirements for unlicensed hazardous waste facilities. DNR argues this would more accurately include all the solid and hazardous waste statutes that exemptions could be granted from, but would retain flexibility for DNR to issue orders if necessary to protect public health or the environment.

6. DNR is working with EPA to determine whether the SB 77 exemptions from hazardous waste management statutes would affect EPA authorization of DNR to administer Resource Conservation and Recovery Act (RCRA) regulations or facilities which transport, store, treat, dispose of, or generate hazardous waste. DNR suggests that in order to meet EPA's approval as retaining state provisions that are as stringent as federal provisions, the following amendment could specify that the exemption from liability would not apply to: (a) a new hazardous waste treatment, storage or disposal facility on the property that begins operation after the date of acquisition by the voluntary party; (b) a licensed hazardous waste treatment, storage or disposal facility that operated on the property prior to the date of acquisition of the property by the voluntary party and which continues to operate or resumes operation after the date of acquisition; and (c) any hazardous waste disposal facility that has applied to have a long-term care license as of the effective date of the budget bill.

7. DNR recommends amending the bill so that when a certificate of completion of a partial cleanup is issued and the owner of the property grants DNR an easement or other interest under SB 77, DNR be allowed to record the easement or other interest as a restriction on the deed to the property. It should be noted that DNR sometimes records deed restrictions on properties cleaned up under other statutes, without specific statutory authorization. Adding the authorization for a deed restriction for partial cleanups without adding it in other cleanup statutes could raise questions as to DNR's authority to record deed restrictions on other properties.

8. DNR recommends amending the bill to require that the certificate of completion of partial cleanup can only be granted if public health, safety or the environment will not be endangered by any hazardous substances remaining off of the property, in addition to on the property. DNR argues that the suggested amendment would more clearly address any public health and safety issues related to the contamination. The amendment could also broaden the scope of cleanup required to obtain certification of partial cleanup and could make the certification more costly to obtain.

9. DNR recommends amending the bill to require the owner of the property for which a certification of partial cleanup is made to allow DNR or "its representatives" instead of "its agents" to undertake activities on the property. This would be consistent with other brownfields liability provisions.

## ALTERNATIVES TO BASE

1. Approve the Governor's recommended changes related to voluntary party liability exemption from the spills law and certification of a partial cleanup.

| <u>Alternative 1</u>             | <u>PR</u> |
|----------------------------------|-----------|
| 1997-99 REVENUE (Change to Base) | \$87,200  |
| [Change to Bill                  | \$87,200] |

2. Modify the Governor's recommendation to include one or more of the following amendments:

a. Modify the list of requirements that a voluntary party would be exempt from to: (1) delete the exemption under hazardous waste statutes from orders by DNR to take action necessary to protect public health or the environment; (2) delete the exemption from hazardous waste license revocation actions; and (3) add an exemption from closure and long-term care plan requirements for unlicensed hazardous waste facilities.

b. Specify that the voluntary party exemption from liability would not apply to: (1) a new hazardous waste treatment, storage or disposal facility on the property that begins operation after the date of acquisition by the voluntary party; (2) a licensed hazardous waste treatment, storage or disposal facility that operated on the property prior to the date of acquisition of the property by the voluntary party and which continues to operate or resumes operation after the date of acquisition; and (3) any hazardous waste disposal facility that has applied to have a long-term care license as of the effective date of the budget bill.

c. Require the voluntary party who obtains certification of completion of a partial cleanup to allow DNR to record the easement or other interest as a restriction on the deed to the property.

d. Require that the certificate of completion of partial cleanup can only be granted if public health, safety or the environment will not be endangered by any hazardous substances remaining off of the property, in addition to on the property.

e. Require the owner of the property for which a certification of partial cleanup is made to allow DNR or "its representatives" instead of "its agents" to undertake activities on the property.

3. Maintain current law.

Prepared by: Kendra Bonderud

MO# Alt. 2a, b,  
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|   |           |                                  |   |   |
|---|-----------|----------------------------------|---|---|
| 2 | BURKE     | <input checked="" type="radio"/> | N | A |
|   | DECKER    | <input checked="" type="radio"/> | N | A |
|   | GEORGE    | <input checked="" type="radio"/> | N | A |
|   | JAUCH     | <input checked="" type="radio"/> | N | A |
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|   | COWLES    | <input checked="" type="radio"/> | N | A |
|   | PANZER    | <input checked="" type="radio"/> | N | A |
|   |           |                                  |   |   |
| / | JENSEN    | <input checked="" type="radio"/> | N | A |
|   | OURADA    | <input checked="" type="radio"/> | N | A |
|   | HARSDORF  | <input checked="" type="radio"/> | N | A |
|   | ALBERS    | <input checked="" type="radio"/> | N | A |
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|   | KAUFERT   | <input checked="" type="radio"/> | N | A |
|   | LINTON    | <input checked="" type="radio"/> | N | A |
|   | COGGS     | <input checked="" type="radio"/> | N | A |

AYE 16 NO 0 ABS 0